

**CITY OF BEAVERTON
STAFF REPORT AND RECOMMENDATION**

HEARING DATE: Wednesday, February 9, 2005

TO: Planning Commission

FROM: Tyler T. Ryerson, Associate Planner

PROPOSAL: **TA2004-0010 (Utility Undergrounding Section 60.65 Text Amendment)**

REQUEST: The City of Beaverton requests to amend the City's Development Code Section 60.65 *Utility Undergrounding* and Section 40.95 *Variance*. The proposed modification to Section 60.65 provides an opportunity to exempt voter approved Washington County MSTIP 1, 2, and 3 funded road improvements from undergrounding overhead utilities as currently required by the Development Code. The proposal to modify Section 40.95 provides an opportunity to vary the undergrounding requirement for publicly funded roadway projects based upon specific criteria.

APPLICANT: City of Beaverton - Development Services Division

AUTHORIZATION: Ordinance 2050 (Development Code), effective through Ordinance 4332

APPLICABLE CRITERIA: Section 40.85.15.1.C.1-7 (*Text Amendment Approval Criteria*)

RECOMMENDATION: **TA2004-0010 (Utility Undergrounding Section 60.65 Text Amendment):** Staff recommend APPROVAL of text amendment application

I. Proposed Legislative Text Amendment

Amendment to Utility Undergrounding Section 60.65

The proposed Development Code text amendment to *Utility Undergrounding* Section 60.65 is to provide an exemption to the requirement of undergrounding existing overhead utilities located along roadways associated with Major Streets Transportation Improvement Program (MSTIP) 1, 2, and 3 projects as identified on the MSTIP project lists Exhibit 1.3. The amendment to Section 60.65 does not include projects identified as a MSTIP 3b or future MSTIP funded projects which are not included on the MSTIP 1, 2, or 3 lists. Most of the projects of MSTIP 1, 2, and 3 have already been constructed, a few projects remain in and around the City's boundaries.

MSTIP 1, 2, and 3 programs were approved by Washington County voters as short-term levies in 1986, 1989, and 1995 respectively. After the approval of Measure 50, serial levies such as MSTIP were cut back, but the Board of County Commissioners, in conjunction with the Washington County Coordinating Committee comprised of Washington County Land Use and Transportation and the cities of Washington County, continues to devote the same ratio of what are general fund resources to transportation funding. The funding scope of MSTIP 1, 2, and 3, approved by the voters, did not include in the scope of work to underground utilities. Ordinance 4118, approved on August 15, 2000, adopted the current City's Development Code requirements to underground existing and proposed utilities. Therefore, the proposal to amend *Utility Undergrounding* section 60.65 will allow voter approved MSTIP 1, 2, and 3 projects an exemption from the Development Code's utility undergrounding requirements.

Projects which are identified on the MSTIP 3b list and any future MSTIP project not identified on the MSTIP 1, 2, 3, or 3b lists would be required to adhere to the *Utility Undergrounding* Section 60.65 requirements. These projects are not subject to voter approved funding which excluded the project scope of undergrounding utilities.

Section 1: The Development Code, Ordinance No. 2050, Ordinance 4332, Chapter 60 – Special Requirements, Section 60.65 Utility Undergrounding specifically Section 60.65.15.1., will be amended to read as follows:

60.65 Special Requirements - Utility Undergrounding

60.65.15.

1. At the option of the applicant and subject to rules promulgated by the Oregon Public Utility Commission (PUC), this requirement does not apply to surface mounted transformers, surface mounted connection boxes and meter cabinets, which may be placed above ground, temporary utility service facilities during construction, high capacity electric lines operating at 50,000 volts or above, ~~and~~ that portion of a project where undergrounding will require boring under a collector or arterial roadway, and voter approved MSTIP 1, 2, and 3 funded roadway projects.

The proposed amendment to the Development Code Section 60.65 text as shown above is attached in Exhibit 1.1.

Amendment to Variance Section 40.95

The proposed Development Code text amendment to Section 40.95 *Variance* is to allow for the opportunity to vary from the requirement to underground existing overhead utilities when the funding authority for publicly funded roadways specifically excludes funding for undergrounding utilities. A number of available funding sources do not allow utility undergrounding improvements to be included in allocated funds. Therefore to provide an opportunity to vary from the undergrounding requirement, a variance opportunity is proposed.

As opposed to the proposed amendment to Section 60.65 *Utility Undergrounding*, in which the exemption to underground is based upon the scope of work Washington County voters approved funding which excluded undergrounding for MSTIP 1, 2, and 3 projects; this amendment proposal is based upon the scope of public funding if undergrounding of public projects is excluded from the funding authority, then a variance application could be applied for by the public agency.

Section 2: The Development Code, Ordinance No. 2050, Ordinance 4332, Chapter 40 – Applications, Section 40.95 Variance specifically Section 40.95.10. and 40.95.15.1.A., will be amended to read as follows:

40.95.10. Applicability.

A Variance application may only be requested for those proposals that request a variance of more than fifty percent (50%) from the numerical Site Development Requirements contained in Chapter 20 (Land Uses) or any numerical requirements contained in Section 60.30 (Off-Street Parking), Section 60.40 (Sign Regulations), ~~and~~ Section 60.55 (Transportation Facilities), excluding Section 60.55.30, and Section 60.65 (Utility Undergrounding) for publicly funded roadway projects.

40.95.15. Application.

1. Variance.

- A. Threshold. An application for Variance shall be required when the following threshold applies:

6. A publicly funded roadway project.

- C. Approval Criteria. In order to approve a Variance application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

9. For a proposal for a variance from utility undergrounding regulations, no variance shall be granted unless it can be shown that the primary funding source for the project specifically excludes such work from the funding authority.

10. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

The proposed amendment to the Development Code Section 40.95 text as shown above is attached in Exhibit 1.2.

II. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA2004-0010 (Utility Undergrounding Section 60.65 Text Amendment).

1. The proposal satisfies the threshold requirements for a Text Amendment application.

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed *any change to the Development Code, excluding changes to the zoning map*. TA2004-0010 (Utility Undergrounding Section 60.65 Text Amendment) proposes to amend Section 60.65 and 40.95 of the Beaverton Development Code currently effective through Ordinance 4332 (January 2005). Therefore, staff find that approval criterion one has been met.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

Policy Number 470.001 of the City's Administrative Policies and Procedures manual states that fees for a City initiated application are not required where the application fee would be paid from the City's General Fund. The Development Services Division, which is a General Fund program, initiated the application. Therefore, the payment of an application fee is not required. Staff find that approval criterion two is not applicable.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan (UGMFP) is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy
- Title 3: Water Quality, Flood Management and Fish and Wildlife Conservation
- Title 4: Industrial and Other Employment Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Central City, Regional Centers, Town Centers and Station Communities
- Title 7: Affordable Housing
- Title 8: Compliance Procedures
- Title 9: Performance Measures
- Title 10: Functional Plan Definitions

Title 11: Planning for New Urban Areas
Title 12: Protection of Residential Neighborhoods

The UGMFP does not specifically address issues of relocating above-ground utilities to underground locations. Although the proposed Text Amendment will not fully implement the provisions of the UGMFP, the are supportive of other actions the City will be required to take to comply with the UGMFP. The proposed amendment has no applicability to the Metro titles. Staff find that approval criterion three is not applicable.

4. *The proposed text amendment is consistent with the City's Comprehensive Plan.*

Staff suggests that Chapter 3 of the Comprehensive Plan (Land Use Element) is relevant to the proposed amendment. Two (2) Comprehensive Plan policies which are related to the proposed amendments to Sections 60.65 *Utility Undergrounding* and 40.95 *Variance*. The proposed text amendment will not change the intent of the existing Development Code regulations, such that goals and policies of the Comprehensive Plan will be impacted. The following goal, policies, and action statements generally address undergrounding of utilities:

Chapter 3 – Land Use Element

3.4.1 Goal: *Provide a policy framework for a community designed to establish a positive identity while enhancing livability.*

Policies:

- c) *Existing overhead utilities shall be placed underground in all parts of the community in conjunction with development.*
- j) *Ensure public and private facilities, especially essential public facilities, are available and provided at the time of development to reduce initial and long-range costs to City businesses and residents.*

Action 1: *On and off-site improvements should add to the character and quality of the area as a place for people to live and work. This includes such measures as utility undergrounding and basic pedestrian improvements such as street trees and sidewalks. Street trees are central to creating neighborhood community; therefore, land use regulations shall be adopted requiring street trees or a fee-in-lieu.*

Utility undergrounding is a requirement of Development Code Section 60.65. The proposal to amend this requirement is limited to publicly funded roadway projects. Major Streets Transportation Improvement Program was originally a voter

approved and funded program, however utility undergrounding was not identified to the voters as a part of the roadway project's scope of work. The projects listed in MSTIP 1, 2, and 3 were approved prior the City's current Development Code language requiring utility undergrounding. Although most of the projects of MSTIP 1, 2, and 3 have already been constructed, a few projects remain. Roadway projects are development and the policies identify that existing overhead lines be placed underground in conjunction with development. In addition, the Comprehensive Plan Action 1 of Policy 3.4.1.j implies that utility undergrounding will assist in creating character and quality of the area as a place for people to live and work. The amendment proposal is limited to those projects on the MSTIP 1, 2, and 3 lists and publicly funded roadway projects where funding is not available for undergrounding. The benefit to the community to underground could shortchange other priority improvements as funding is required to be shifted from other projects to underground the utilities. Staff find that the proposed text amendment is consistent with the provisions of the Beaverton Comprehensive Plan as utility undergrounding continues to be required, with minor publicly funded exemption opportunities. Therefore, staff find that approval criterion four has been met.

5. *The proposed text amendment is consistent with other provisions within the City's Development Code.*

The proposed amendments do not create impacts or conflicts with other provisions within the Development Code. Staff find that proposed amendments provide are consistent with the other provisions of the Development Code. Therefore, staff find, that the approval criterion five has been met.

6. *The proposed amendment is consistent with all applicable City ordinance requirements and regulations.*

The current Development Code and Ordinance No. 4187, which adopted the current Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that would be affected by the proposed text amendments. Therefore, staff find that approval criterion six has been met.

7. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

Staff have determined that there are no other applications and documents related to the request that will require further City approval. Therefore, staff find that approval criterion seven has been met.

III. Conformance with Statewide Planning Goals

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, the Statewide Planning Goals are useful to support the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

GOAL ONE - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement, and distribution of information. The proposed text amendments to the Development Code will not change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One.

GOAL TWO - LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4265). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.

IV. Conclusion and Staff Recommendation

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7. Therefore, staff recommend the Planning Commission **APPROVE TA2004-0010 (Utility Undergrounding Section 60.65 Text Amendment)** at the February 9, 2004 regular Commission hearing.

V. Exhibits

Exhibit 1.1 Proposed Text Amendment Section 60.65 *Utility Undergrounding*

Exhibit 1.2 Proposed Text Amendment Section 40.95 *Variance*

Exhibit 1.3 MSTIP 1, 2, 3, and 3b project lists, provided by Washington County